may have been abnormally high,[10] but whether these circumstances existed may be discovered in actual cases and, if so, allowance may be made for them.

Another method frequently employed is "the comparative plant method," which defines "going value" as the "value of a created income" or the difference in earnings of the plant in question and the probable earnings of a hypothetical plant, with all its business to acquire, between the time of valuation and that time in the future when their revenues shall become equal.[11] To apply this method to rate cases, however, is reasoning in a circle, as the earnings of the hypothetical plant will depend on the rate of return allowed by those now fixing the rates.[12]

At any rate, should none of the generally accepted methods of calculating "going value" appear satisfactory, since this value is obviously real, a practical solution would be to place the burden, of estimating it on the corporation whose rates are under consideration, and to allow "going value" to be included in a fair valuation of its property to such an extent as it is accurately shown to exist.[13]

FREEDOM OF THE PRESS AND THE INJUNCTION.—It is quite evident that no new principles of liberty were intended to be set forth by the First Amendment,[1] and that, however enticing a philosophical theory of freedom of the press and of speech may be, the guaranty must be construed with reference to the common law which gave it birth.[2] When Blackstone declared in 1769 that the liberty of the press consisted in placing no previous restraints upon publications, he was not laying down a new principle of constitutional theory, but merely stating what he believed to be the existing law.[3] Apparently his generalization was too broad. Injunctions against the infringement of a copyright were not infrequent in his day.[4] He could not have intended, therefore, to declare that the press was not subject to the writ of injunction. In most if not all state constitutions, even where the form of the guaranty is that every person may freely publish his sentiments on

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[10]See Spring Valley Water Co. *v.* San Francisco (C. C. 1908) 165. Fed. 667, 692; Contra Costa Water Co. *v.* Oakland, *supra.*

[11]Whitten, Valuation of Public Utilities, 500; Floy, Valuation of Public Utility Properties, 151.

[12]Whitten, Valuation of Public Utilities, 513, 515.

[13]See Spring Valley Water Works *v.* San Francisco (C. C. 1911) 192 Fed. 137, 166; Contra Costa Water Co. *v.* Oakland, *supra.*

[1]See Hamilton in the Federalist, No. 84 (Ford's ed.) 575 n.

[2]It was early contended that the First Amendment broadened the common law liberty, see 2 Tucker, Bl. Comm. Appendix, Note (G) 11-30. More recently this view has been elaborated by Schroeder, Obscene Literature and Constitutional Law, ch, 8-11. It is, however, based on a false major premise by which the guaranty is given a literal interpretation instead of the significance it bore to the framers. See Hirsch, Liberty of the Press, ch. 2.

[3]Similarly, De Lolme wrote in 1773 that no judges were authorized to take notice of writings intended for the press. De Lolme, Constitution of England (Ed. 1790) Bk. 2, p. 297.

[4]Blackwell *v.* Harper (1740) 2 Atk. 93; Macklin *v.* Richardson (1770) Amb. 694.

all subjects, being responsible for the abuse of that liberty, the same defective generalization is present.[5] In the recent case of *Schwartz* v. *Edrington, Judge* (La. 1913) 62 So. 660, it was held that such a provision did not prohibit the issuance of an injunction restraining the relators from publishing a petition as having been signed by persons who had repudiated it. The court attempts to construe the guaranty literally, deciding that the petition did not constitute a publication of the "sentiments" of the relators.[6] And other courts have held, upon a literal construction of the constitutional inhibition, that the injunction is incompatible with free speech or a free press.[7] Their error can only be combated by showing from a historical investigation the real significance of the guaranty.

With the abolition of the tyrannical jurisdiction of the Star Chamber, a reaction set in against the use of the injunction in the summary manner, and for purposes previously customary in that court. When, therefore, Lord Chief Justice Scroggs assumed in 1680 to enjoin the publication of a libel, his action aroused a vigorous protest at the Bar, and formed one of the articles of impeachment against him.[8] In short, it had crystallized into a customary practice recognized by English lawyers as part of the unwritten constitution that libels were not to be restrained.[9] In order, therefore, to arrive at Blackstone's meaning, his statement must be interpreted, in the light of history, to forbid any interference, previous to publication, with those classes of injurious matter alone which the Government had in former times been eager to suppress, namely, blasphemous, indecent, seditious and defamatory libels. Indeed, a mere dictum by Lord Ellenborough that an injunction might issue to restrain a libel[10] caused great astonishment among practitioners in Chancery.[11] Around such matter constituting a sort of political crime the strongest popular safeguards were thrown. While, therefore, a jury was indispensable in the trial of persons accused of ordinary crimes, yet both in England and in this country, because of the vagueness of the law of libel, the jury trial assumed a peculiar and far greater popular importance in libel cases.[12] In many states,

[5]Commentators on the Constitution unconsciously recognize this result, leading to seeming contradiction. See Story, Equity Jurisprudence, §§ 944-951, and compare this with the doctrine stated in the same author's Commentaries on the Constitution, §§ 1880-1888.

[6]The result reached is undoubtedly correct. But it has never yet been a successful plea to prevent an injunction against a copyright infringement that the infringer was expressing his sentiments. And see Cowan *v.* Fairbrother (1896) 118 N. C. 406.

[7]Lindsay & Co. *v.* Montana F. of L. (1908) 37 Mont. 264; Marx Clothing Co. *v.* Watson (1902) 168 Mo. 133; but see Lohse Patent Door Co. *v.* Fuelle (1908) 215 Mo. 421; Dailey *v.* Superior Court (1896) 112 Cal. 94.

[8]Impeachment of Scroggs, L. C. J. (1680) 8 How. St. Tr. 198, following Trial of Henry Carr (1680) 7 How. St. Tr. 1111.

[9]See Anonymous Case (1742) 2 Atk. 469; Brandreth *v.* Lance (N. Y. 1839) 8 Paige 24; Marlin Fire Arms Co. *v.* Shields (1902) 171 N Y. 384; Flint *v.* Hutchinson S. B. Co. (1892) 110 Mo. 492.

[10]Du Bost *v.* Beresford (1810) 2 Camp. 511, 512.

[11]See notes to the report of Trial of John Horne (1777) 20 How. St. Tr. 764, 799, published in 1814.

[12]See State *ex rel.* Liversey *v.* Judge (1882) 34 La. Ann. 741.

indeed, the constitution contains a special provision guaranteeing a jury trial in all prosecutions for libel.[13]

This immunity from an injunction, while applicable to libels, is not similarly applicable to other forms of injurious publications where the historical requirement of a jury trial is not so pressing. Accordingly, where the act of publication results in intimidation and coercion it is treated as an ordinary crime, and the liberty of the press does not then limit the jurisdiction of equity to protect property.[14] Furthermore, according to the prevailing view, it seems that a publication, no matter how innocent in itself, may be enjoined if it is made in pursuance of a scheme which has an enjoinable element.[15] Thus, although the courts are at variance as to whether an injunction may issue against a boycott,[16] they are agreed that wherever such is the case, publications in aid thereof, even if libels, cannot claim the protection of the guaranty.[17] In establishing this doctrine they assert that the right to engage in a lawful occupation is not less essential than that of free speech.[18] In order, therefore, to obtain the greatest possible freedom of action and speech equally for all, these conflicting constitutional rights must be exercised in accordance with the maxim, *Sic utere tuo ut alienum non laedas.*[19] Certainly, the press should not be employed unjustifiably to ruin another's occupation, and where such ruin is imminent the injunction, though a dangerous weapon, becomes a proper one.

REGULATION OF INTERNAL AFFAIRS OF FOREIGN CORPORATIONS.[1]—The principle is frequently stated that courts of equity will not take jurisdiction in suits which involve regulating the internal affairs of a foreign corporation.[2] The reasons assigned for the doctrine are the futility of rendering a decree which the court would be powerless to

[13]See N. Y. Constitution, Art. 1, § 8. But the necessity for such trial was in the nature of a protection to the individual against arbitrary rulings on the part of the judge. Hence, to-day, when the jury has decided a publication to be libelous there is no objection to enjoining its further publication if irreparable injury to a property right will ensue. See Flint *v.* Hutchinson S. B. Co., *supra;* Baltimore Life Ins. Co. *v.* Gleisner (1902) 202 Pa. 386.

[14]See Beck *v.* Teamsters' Prot. Union (1898) 118 Mich. 497, 526; Emack *v.* Kame (C. C. 1888) 34 Fed. 46; Shoemaker *v.* The South Bend S. A. Co. (1893) 135 Ind. 471; Pratt Food Co. *v.* Bird (1907) 148 Mich. 631; Thomas *v.* Cincinnati etc. Ry. (C. C. 1894) 62 Fed. 803.

[15]Amer. Federation of Labor *v.* Buck's S. & R. Co. (1909) 33 App. Cas. (D. C.) 83, 108.

[16]Rocky Mtn. Bell Tel. Co. *v.* Montana F. of L. (C. C. 1907) 156 Fed. 809. But see Lindsay & Co. *v.* Montana F. of L., *supra.*

[17]See Gompers *v.* Bucks Stove & Range Co. (1911) 221 U. S. 418.

[18]Rocky Mtn. Bell Tel. Co. *v.* Montana F. of L., *supra.*

[19]Pavesich *v.* New Eng. Life Ins. Co. (1904) 122 Ga. 190, 202, *et seq.*

[1]Whether the courts will enforce the statutory individual liability of stockholders of foreign corporations, though sometimes considered under this head, really depends upon different considerations. See 6 COLUMBIA LAW REVIEW 45.

[2]3 Cook, Corporations (7th ed.) § 734; 5 Thompson, Corporations (2nd ed.) § 6741; Madden *v.* Elec. Light Co. (1897) 181 Pa. 617, reaffirmed (1901) 199 Pa. 454.